

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KIMBERLY DIESEL,
individually, and on behalf of
all others similarly situated,

Civil Action No.: 4:22-cv-1368

Plaintiff,

vs.

MARIANI PACKING COMPANY, INC.,

Defendant.

DEFENDANT MARIANI PACKING COMPANY, INC.'S NOTICE OF REMOVAL

COMES NOW Defendant, Mariani Packing Company, Inc. (“Defendant”), pursuant to 28 U.S.C. §§ 1331, 1332(d), 1441, 1446 and 1453, and hereby files this Notice of Removal of the instant action based upon federal question jurisdiction and subject matter jurisdiction pursuant to the Class Action Fairness Act. In support of this Notice, Defendant states as follows:

1. On or about November 14, 2022, Plaintiff commenced an action in the Circuit Court of St. Louis County, Missouri, styled *Kim M. Diesel v. Mariani Packing Company, Inc.*, and bearing Case No. 22SL-CC04849. A copy of Plaintiff’s Petition and all other papers filed in the state court action are attached hereto and incorporated herein as **Exhibit A**.
2. Defendant was served with the summons and Petition on November 22, 2022.
3. Removal is warranted under 28 U.S.C. § 1332(d), also known as the Class Action Fairness Act of 2005 (“CAFA”) because the amount in controversy exceeds \$5 million, the proposed class consists of more than 100 members, and there is minimal diversity.

4. Removal is also warranted under 28 U.S.C. § 1331 because Plaintiff makes a claim arising under the laws of the United States and the claims have not been made non-removable by statute.

5. In accordance with 28 U.S.C. § 1446(a), the documents attached hereto as **Exhibit A** constitute all of the process, pleadings, and orders served on Defendant prior to the removal of this action.

6. In her Petition, Plaintiff alleges that Defendant violated the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, among other allegations.

I. Jurisdictional Basis for Removal – Subject Matter Jurisdiction Pursuant to CAFA

7. Under the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d), this Court has subject-matter jurisdiction over a class action in which the amount in controversy exceeds \$5 million, the proposed class consists of more than 100 members, and there is minimal diversity.

8. A plaintiff who seeks to represent a class may not avoid federal jurisdiction by stipulating that the amount in controversy does not exceed \$5 million. *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345 (2013).

9. Here, the amount in controversy exceeds \$5 million, exclusive of interest and costs, the number of members of the proposed class exceeds 100, and at least one member of the class is diverse from Defendant. *See Exhibit B, Declaration of Mark Mariani*.

II. Jurisdictional Basis for Removal – Federal Question

10. Under 28 U.S.C. § 1331, this Court has original jurisdiction over all claims arising under the laws of the United States.

11. Here, Defendant's alleged violation of the Magnuson Moss Warranty Act constitutes a claim being brought under the laws of the United States.

12. Accordingly, this action presents claims arising under the laws of the United States, thereby conferring jurisdiction on this Court pursuant to 28 U.S.C. § 1331.

III. Jurisdictional Basis for Removal – Supplemental Jurisdiction

13. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over any potential claims brought pursuant to any state, county, or local law that form part of the same controversy.

14. Here, jurisdiction is conferred on this Court, pursuant to 28 U.S.C. § 1367, concerning any claim that Plaintiff may assert in her complaint, which arises under the same facts and that form part of the same controversy.

I. Removal to this Court is Otherwise Proper

15. This Notice of Removal is filed within thirty (30) days of service of the summons and Petition upon Defendant, and is timely under 28 U.S.C. § 1446(b).

16. The United States District Court for the Eastern District of Missouri embraces the county in which the state court action is now pending, and thus this Court is the proper venue for this action.

17. In accordance with 28 U.S.C. § 1446(d), on December 22, 2022, Defendant is filing its Notice of Removal with the Clerk of the Court of the Circuit Court for St. Louis County, Missouri, where Plaintiff's Petition was originally filed, and its Notice of Filing of Notice of Removal, together with a Notice of Removal, is being served upon Plaintiff.

18. If any questions arise as to the propriety of the removal of this action, Defendant requests the opportunity to brief any disputed issues and to present oral argument in support of the position that this case is properly removable.

19. Defendant Mariani Packing Company, Inc. is the only named defendant in this action.

20. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Defendant's right to assert any defense or affirmative matter including, without limitation, the defenses of 1) lack of jurisdiction over the Defendant, 2) improper venue, 3) insufficiency of process, 4) insufficiency of service of process, 5) improper joinder of claims and/or parties, 6) failure to state a claim, or 7) any other procedural or substantive defense available under state or federal law.

21. Pursuant to Local Rule 81-2.03, a Proof of Filing of Notice of Removal to State Court and Proof of Service on all adverse parties is being filed contemporaneously herewith.

JURY TRIAL DEMANDED

Defendant hereby requests that this matter be tried to a jury.

WHEREFORE, pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453, Defendant, Mariani Packing Company, Inc. hereby notifies all relevant parties that further proceedings in the Circuit Court of St. Louis County, Missouri are discontinued and that the suit is removed to the United States District Court for the Eastern District of Missouri.

Respectfully Submitted,

GORDON REES SCULLY MANSUKHANI, LLP

/s/ James C. Morris

James C. Morris, #53074
211 North Broadway, Suite 2150
St. Louis, Missouri 63102
Telephone: (314) 961-6686
Fax: (314) 338-3076
jmorris@grsm.com
*Attorneys for Defendant,
Mariani Packing Company, Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that on the 22nd day of December 2022, the foregoing instrument was filed electronically with the Clerk of the Court and served upon Plaintiff's counsel of record by electronic mail:

Daniel F. Harvath
75 W. Lockwood Ave. Ste 1
Webster Groves, Missouri 63119
dharvath@harvathlawgroup.com

Sheehan & Associates, P.C.
Spencer Sheehan
60 Cuttermill Rd. Ste 412
Great Neck, NY 11021
spencer@spencersheehan.com

Attorneys for Plaintiff

/s/ James C. Morris